

Testimony submitted to the Subcommittee on Economic Development, Public Buildings and Emergency Management on “Doing Business with the Government”

Thank you for allowing me the opportunity to give testimony before this most prestigious body. A special thanks to the Honorable Congresswoman from the Nation’s Capitol, Ms. Eleanor Holmes Norton, for this very special invite to appear before the Subcommittee on Economic Development, Public Buildings and Emergency Management. The topic “Doing Business with the Government: The Record and Goals for Small, Minority and Disadvantaged Businesses” has been a subject matter that I have immersed myself in for the past twenty-five years.

I have studied small business development as a student in Public Administration in both undergraduate and graduate school. I teach government contracting and doing business with the government at the local community college. I have been a government practitioner on the local level and the federal level. I have been an employee of a small business, and an entrepreneur seeking to do business with the government. Currently, on behalf of Capitol City Associates, Inc., I am a small business Outreach Specialist for a major contractor, performing work on a BRAC designated project.

Over the years my experience has allowed me to critically examine the impediments of why small, minority, and disadvantaged businesses were not receiving a larger share of federal contract dollars. The federal government historically has concentrated its acquisition of goods and services with large businesses. This increased trend of spending public dollars with large businesses have increased, despite the Small Business Act of 1953, or the symbolic 1971 Presidential Executive Order 11625, or the substantive legislative enactment of Public Law 95-507.

In 1961, President, Dwight D. Eisenhower, in his farewell speech to the nation coined the phrase, military-industrial complex. He said, that “the potential for the disastrous rise for misplaced power exist and will persist”. I suggest to you today that we are witnessing a culture of government spending and government action that is continuing to concentrate spending with large businesses in and outside the military-industrial complex. I just recently left the Department of Defense, Missile Defense Agency’s Office of Small Business Programs. There, I was the Program Manager in the Small Business Office. Of the 4.2 billion dollars spent in procurement 85% to 90% went to five companies. This is not atypical; it is symptomatic of a culture that is pervasive in government acquisition.

The above comments are intended to place into context the comments that will be made in the remaining body of this testimony. The above comments set the tone for where the federal procurement process has been and has evolved. The comments below are

intended to be critical in order to foster a remedy that is practical and enforceable within the frame work of today's laws and regulations. The below examples of "Doing Business with the Government" covers my experience as an entrepreneur, a business consultant, a business development specialist, and a representative of Capitol City Associate, Inc.

Let us start with the Architect of the Capitol. AOC is currently advertising a solicitation notice, number RFP060085, Facilities Support Services. AOC is soliciting for housekeeping, landscaping, snow removal, pest control, elevator and lift maintenance, and other services as necessary. The solicitation says "THE RESULTANT FIRM-FIXED PRICE CONTRACT WILL BE AWARDED TO ONE CONTRACTOR". In FAR 2.101 Bundling is described as the consolidation of two or more requirements previously provided or performed under separate small contracts into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business concern. There is a need here to challenge the Acquisition Plan. I would be very curious to see the acquisition plan prepared by the Contracting Officer, as outlined in FAR Part 7.105; there should be a written acquisition plan. This is just one example of what we as small businesses are up against. Were there alternative strategies that would reduce or minimize the scope of bundling, or what was the rationale for not choosing alternatives, Federal Acquisition Regulation Part 7.107?

As a business person should I complain? Complain to whom? Complain to the PCR, the Procurement Center Representative. Section 125 of 13CFR: states the Duties of the PCR. The PCR should be coordinating with the Small Business Specialist on anticipated bundled contracts. Are they performing their duties? The PCR should insure that unnecessary and unjustified bundling of contracts is avoided; assess impediments to small business primes. AOC's current acquisition is not an isolated bundled solicitation.

Another small business impediment is subcontracting. One of the procurement vehicles that government personnel recommend to small businesses is to be a subcontractor. In most cases the government personnel has no idea what it takes to get in the door at Boeing, Northrop Grumman or the like, but nevertheless, this is often their remedy to doing business with the government. Being a subcontractor to one of the large contractor is a very challenging task. In the construction arena, where subcontracting is a common practice, the bureaucracy acts as if it has no understanding of how the industry operates and they do a poor job in evaluating the subcontracting plan.

In accordance with FAR 19.7 a solicitation offer that is expected to exceed \$550,000 or \$1,000,000 for construction must present a subcontracting plan. In construction the plan is too often a generic reiteration of a good faith effort. A Prime Contractor when responding to the solicitation often details their team. They submit the names of the mechanical contractor or the electrical contractor or another substantial partner on the team. They should be encouraged, by way of evaluation points, to specifically identify two or more small business partners in the submittal of their solicitation.

Once the plan is submitted the government then tells the Prime Contractor that they should report twice a year. Having the Contractor to report twice a year on how well they

are performing in accordance with their subcontracting plan with small, minority and woman owned businesses is grossly inadequate. Monthly reporting should be the order of the day in construction. In six months most projects have moved from general requirements, Division 01 work, to Division 04 work, or masonry services.

Reporting twice a year in construction on how you are implementing your plan makes a mockery out of the process.

The Office of Small Disadvantaged Business Utilization offers many remedies to small business concerns in order to “Do Business with the Government”. One remedy it offers is to tell small businesses that they must research, and gather intelligence on the agency’s mission, needs and requirements. The agency’s culture is hostile to small businesses. It is very difficult to receive a return call and even more difficult to set up an appointment with a using agency representative. One of the reasons for this is the impotence of the Small Business Office. Most OSDBU Directors do not have the clout or relationship with the Director of the Agency. In FAR 19.2, it states that the Small Business Director reports directly to the agency head. If the OSDBU Director had clout they would state to the contracting officer that “market research” is as much the C/O responsibility as it is the vendors. FAR Part 10 describes how the contracting officer should be conducting market research. Currently, contracting officers do not document how market research is conducted. In DoD there is a form, DD 2579, Small Business Coordination Record, that details how market research has been conducted in seeking small businesses. Non DoD agencies need to adopt this form. It needs to be an SF form. If the contracting officer would perform due diligence in market research there would be ample opportunities for the small business community to acquire intelligence on what the agency’s needs were.

Small businesses have an uphill battle when trying to do business with the federal government even when they are awarded a contract. In January of 2008, an 8a firm won an award, so they thought. There a firm was told by ATEC, the U.S. Army Test and Evaluation Command that they had been awarded, via GSA e-Buy, a contract for 1.1 million dollar. This was an award to establish an asset management system. They were told the next day that they had **not** won the award. They asked for an explanation and were told that it was a mistake and that you should “let it go”. The award was made to Hewlett Packard. The small business was intimidated by the tone and reference to what one “should” do. Instead of the government representative inviting the small business in for a debriefing and offering them information on how to file a protest, they attempted the intimidation route.

In summary, it is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

The enforcement mechanism included in FAR, as well as, seen in best practices in some local and state jurisdictions should be examined, and where appropriate should be adopted. Agency's informational briefings need to be made public. Small Business Representatives in the OSDDBU office or PCR's could advertise to small businesses that could benefit from the monthly briefings. If government needs a vendor to manage their building, do not decimate the possibilities of small business participation by placing all the facility management work under the building manager's contract.

PL 95-507 stipulates that it is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small businesses, small disadvantaged businesses and women-owned businesses. This stipulation also extends to having the maximum practicable opportunity to participate as subcontractors in contracts awarded by any executive agency. Let's make this legislation a reality in practice.

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